

REMARKS

Claims 10-16 are pending in the application. Claims 1-9 have been canceled previously. Claims 10 and 11 have been amended. New Claims 15 (basis found page 5, line 22 of PCT/GB2005/001333) and 16 (basis found in original claim 11) have been added. No new matter has been added.

1. Claim 10 has been rejected under 35 USC 112, second paragraph because of the typographical error "tettahydro". In view of the amendment to Claim 10 this rejection is now moot as the proviso is deleted.

2. The Examiner has indicated that Claim 11 has been objected to but would be allowable if rewritten in independent format. Pursuant to this objection Claim 11 has been rewritten as an independent claim.

3. The rejection of Claims 10 and 12-14 under 35 USC 102(a) as being anticipated by Heightman et al., WO 2004/035544 has been renewed by the Examiner. It is the Examiner's position that Heightman et al. teaches the compounds, compositions, method of use and process of preparing the compounds of formula (1) where R¹ is cyclohexylmethyl, cyclopropylmethyl, isobutyl, methoxyethyl, 3,3,3-trifluoropropyl, etc.; R² is piperidin-1-ylpropyl, piperidin-1-ylbutyl, piperidin-1-ylethyl, etc.; and n is 0. The Examiner has directed Applicants' attention to examples E2, E4, E18, E29, E30, E48, E52, etc. Applicant has amended Claim 10 rendering this rejection moot.

The Examiner has added two new rejections of the claims set forth in paragraphs 4 and 5 below as follows.

4. Claims 10 and 12-14 have been rejected under 35 USC 102(b) as being anticipated by Gadski et al., WO 2004/018432 by the Examiner. It is the Examiner's position that Gadski teaches the compounds, compositions, method of use and process of preparing the compounds of formula (I) where R¹ is

cyclohexylmethyl, ethyl, isopropyl, cyclopentylmethyl, etc.; R² is piperidin-1-ylpropyl; and n is 0 and has directed Applicants' attention to examples 7, 11, 14, 18, 20, etc. Applicant has amended Claim 10 rendering this rejection moot.

5. Claims 10 and 12-14 have been rejected under 35USC 102(b) as being anticipated by Ishihara et al., WO2001/087834 (US equivalent 7,229,986) by the Examiner. According to the Examiner, Ishihara teaches the compounds of formula (I) where R¹ is isopropyl; R² is 4-(4-chlorophenyl)piperidin-1-ylpropyl; and n is 0 and attention is directed to column 35, lines 34-35. Applicant has amended Claim 10 rendering this rejection moot.


Claim 10 has been amended such that R² is limited to a group which is outside the scope of all the cited references. Basis for the amendment is found in the application as filed at page 6, lines 16-17. None of the cited references encompass or suggest the possibility of R² as heteroaryl.

6. The Examiner has rejected the claims citing two new references for the first time in the present Official Action and has indicated that the present Official Action is Final. It is submitted that such procedure during prosecution is improper. Therefore, Applicant respectfully requests that the "Final" status be removed and Applicant be given another opportunity to respond should the Examiner not find the claims allowable after considering this response to the new rejections.

It is respectfully submitted that the present application is in condition for allowance. Reconsideration and withdrawal of the rejections are earnestly solicited.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or credit any overpayment, particularly including any fees required under 37 CFR Sect 1.16 or 1.17, and any necessary extension of time fees, to deposit Account No. 07-1392.

Respectfully submitted,


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